IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

W. A.No. 2366 of 2007

AGAINST THE JUDGEMENT IN WP(C)NO..18324/2007 Dated 14/06/2007

APPELLANT: PETITIONER

V.K.SREENIVASAN,
'SANTHI NIVAS',
35/1425, KALATHIPARAMBIL ROAD,
ERNAKULAM, KOCHI-682 016.

BY ADV. SRI.KMV.PANDALAI

RESPONDENTS: RESPONDENTS
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1. ASSISTANT COMMISSIONER OF INCOME TAX,
   INVESTIGATION CIRCLE, ERNAKULAM.

2. THE INCOME TAX APPELLATE TRIBUNAL,
   ERNAKULAM BENCH, 'KENDRIYA BHAVAN',
   KAKKANAD, ERNAKULAM.

BY STANDING COUNSEL SRI. GEORGE K.GEORGE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04/10/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 2366 OF 2007

Dated this the 4th October, 2007

JUDGMENT

H.L.DATTU, C.J.

Aggrieved by the orders passed by the learned single Judge in W.P.(C) No.18324 of 2007, dated 14th June, 2007, the petitioner in the Writ Petition has presented this appeal.

2. For the assessment years 1979-80 and 1981-82, the petitioner had filed appeals before the Income Tax Appellate Tribunal, Cochin Bench, Cochin in I.T.A.Nos.376 and 377 of 1994. The Tribunal has disposed of the appeals on merits. But, according to the learned counsel appearing for the petitioner, the order passed by the Tribunal is an exparte order.

3. For setting aside the aforesaid order of the Tribunal, the petitioner had filed an application. Further, being of the opinion that there was some delay in filing the application for rectification/review of the order, he has also filed an application for condonation of delay. The Tribunal had rejected those applications.

4. Yet another application came to be filed by the assessee for condonation of delay in filing the rectification/review of the order passed by the Tribunal. Even that application was rejected by the Tribunal. Aggrieved by the orders passed by the Tribunal in I.T.A.Nos.376 and 377 of 1994 and other orders passed on the applications filed by the petitioner for condonation of delay and for rectification/review of the order, the assessee had filed the Writ Petition before this Court.

5. Learned single Judge has rejected the Writ Petition and while doing so has observed that if for any reason, the assessee is aggrieved by the orders passed by the Tribunal, he can question the said orders in appeal filed under

Section 260A of the Income Tax Act. Aggrieved by the order passed by the learned single Judge, as we have already stated, the petitioner is before us in this appeal.

6. The undisputed facts are: Appeals had been filed by the assessee for the assessment years 1979-80 and 1981-82 before the Income Tax Appellate Tribunal, Cochin Bench and those appeals are disposed of by the Tribunal. Applications had been filed by the assessee for setting aside the exparte order and for condoning the delay in filing the application for rectification/review of the order passed by the Tribunal. Those applications are also rejected. In our opinion, if for any reason, the assessee was aggrieved by those orders, he ought to have questioned those orders by filing appropriate appeal as provided under Section 260A of the Income Tax Act. Therefore, in our view, writ petition was not the remedy and the petitioner ought not have filed a writ petition questioning the orders passed by the Tribunal.

7. In that view of the matter, we are of the opinion that the learned single Judge is justified in coming to the conclusion that if for any reason, the petitioner is aggrieved by the orders passed by the Tribunal, he has to question the same in appropriate proceedings before this Court as provided under Section 260A of the Income Tax Act. In that view of the matter, we decline to entertain this appeal. Accordingly, the Writ Appeal is rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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